SUPREME COURT OF THE UNITED STATES.

No. 121.

THE UNITED STATES, APPELLANTS,

vs.

ANDRES YBARRA.

APPEAL FROM THE DISTRICT COURT U. S. FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

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GIDEON, Print.

Transcript of the proceedings in case No. 395—*Andres Ybarra, claimant,* vs. *The United States, defendant—for the place named "Los Encenitos."*

OFFICE OF THE BOARD OF COMMISSIONERS
To ascertain and settle private land claims in the State of California.

Be it remembered, that on this sixteenth day of October, anno Domini one thousand eight hundred and fifty-two, before the commissioners to ascertain and settle the private land claims in the State of California, sitting as a board in the city of San Francisco, in the State aforesaid, in the United States of America, the following proceedings were had, to wit:

The petition of Andres Ybarra, for the place named "Los Encenitos," was presented, and ordered to be filed and docketed with No. 395, and is as follows, to wit:

(Vide page 3 of this Transcript.)

Upon which petition, the following subsequent proceedings were had in their chronological order, to wit:

LOS ANGELES, *November* 10*th*, 1852.

In case No. 395, Andres Ybarra, for the place named Los Encenitos, the deposition of S. Arguello, a witness in behalf of the claimant, taken before Commissioner Hiland Hall, with documents marked H.H, Nos. 1 and 2, and translations thereof marked C and E, annexed thereto, was filed.

(Vide page 4 of this Transcript.)

SAN FRANCISCO, *September* 19, 1853.

Case No. 395 was called, and, on motion of the counsel for the claimant, was ordered to the foot of the docket.

SAN FRANCISCO, *July* 21*st*, 1854.

In the same case, the deposition of Santiago Arguello, a witness in behalf of the claimant, taken before Commissioner G. T. Burrill, was filed.

(Vide page 5 of this Transcript.)

SAN FRANCISCO, *September* 12, 1854.

Case No. 395, on motion of the counsel for the claimant, with the consent of the U. S. law agent, was ordered to the foot of the 2d class cases on the trial docket.

SAN FRANCISCO, *October* 17, 1854.

Case No. 395 was submitted on briefs, and taken under advisement by the board.

SAN FRANCISCO, *October* 31*st*, 1854.

In the same case, Commissioner Alpheus Felch delivered the opinion of the board, confirming the claim.

(Vide page 29 of this Transcript.)

And the following order was made, to wit:

(Vide page 32 of this Transcript.)

Petition.

To the Board of Commissioners for ascertaining and settling private land claims in the State of California:

Your petitioner, Andres Ybarra, of the county of San Diego, in the State of California, respectfully represents to your honorable board, that he claims a certain tract of land, called Los Encenitos, containing one league square, situated in the county and State aforesaid; that he claims the same in fee by virtue of a grant made to him under the authority of the Mexican government by Juan B. Alvarado, governor of the department of the Californias, bearing date the third day of July, A. D. 1842.

Your petitioner further shows, that he was placed in juridical possession of said land on the twenty-second day of July, in the same year, and the boundaries thereof designated and defined, and that he has been in the peaceable possession thereof ever since, and that he knows of no conflicting or interfering claim.

Your petitioner presents herewith a copy of the original grant of said land in the Spanish language, together with a translation of the same, together with a map of the land, and will make such other and further proof as may be required by the board.

Your petitioner prays your honorable board to decree his claim to said tract of land to be valid, and confirm the same.

SUTHERLAND & CARR,
Att'ys for Petitioner.

Filed in office, Oct. 16, 1852.
(Signed) GEO. FISHER, *Sec'y.*

Deposition of S. Arguello.

LOS ANGELES, *Nov.* 10*th*, 1852.

On this day, before Com'r H. Hall, came S. Arguello, a witness in behalf of the claimant, Andres Ybarra, petition No. 395, interpreted by the secretary.

The U. S. associate law agent present.

In answer to inquiries by counsel for the claimant, the witness testified as follows:

My name is Santiago Arguello; my age is sixty years; and I reside at San Diego.

A paper is now shown me purporting to be a grant to Andres Ibarra, dated 13th of July, 1842.

I am acquainted with the signatures of Juan B. Alvarado, Manuel Jorrino, and José R. Arguello; their several signatures appearing on said paper I believe to be genuine. Said paper is hereto annexed and marked H.H, No. 1.

A paper is now shown me purporting to be dated 22d of July, 1842; I am acquainted with the handwriting of José Anto. Goujora, The whole of said paper is in the handwriting of said Goujora, who was a justice of the peace at the date of said paper. It is hereto annexed and marked H.H, No. 2.

I am acquainted with the Rancho Las Encenitas. It has been occupied by Andres Ybarra ever since the year 1839 or 1840.

He has a house there in which he has lived since that time, and is cultivating ground, and keeping stock on the land.

S. ARGUELLO.

Sworn and subscribed before me.

HILAND HALL, *Com'r.*

Filed in office, Nov. 10th, 1852.

(Signed) GEO. FISHER, *Sec'y.*

Deposition of Santiago Arguello.

OFFICE OF THE COMMISSIONER, G. THOMPSON BURRILL,
AT LOS ANGELES, CALIFORNIA.

Before me, G. Thompson Burrill, commissioner duly qualified for the taking of testimony to be used before the board of commissioners to ascertain and settle the private land claims in the State of California, personally appeared Santiago Arguello, a witness in behalf of Andres Ybarra, claimant for the land named Rancho Encenitos, numbered on the docket of said board with No. 395, who upon oath declared and saith as follows:

Questions asked by Counsel for Claimant.

Question No. 1. What is your name, age, and place of residence?

Answer. My name is Santiago Arguello; I am sixty-three years old, and I reside eighteen miles south of San Diego.

Question No. 2. Are you acquainted with the Rancho of Encenitos in San Diego county; if yea, state all you know about its boundaries, and occupation by Andres Ybarra?

Answer. I know the rancho; the first line north from the house of Ybarra are some notable rocks, which rocks comes down the Cañada , which is the northern boundary; the second or southern boundary are also some rocks, where there is standing water, which is the ravine known by the name of San Alego; the western boundary is the north of the lake San Alego; the eastern line is the lake of , formed by the ravine of the same name, which forms a square, embracing one setio, but the measured but one half which is embraced in the above boundaries. Jose Ma. Orasco, alcalde of San Diego, measured the land, I attending as prefect of the second district. This

SAN FRANCISCO, *October* 31*st*, 1854.

In the same case, Commissioner Alpheus Felch delivered the opinion of the board, confirming the claim.

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Your petitioner presents herewith a copy of the original grant of said land in the Spanish language, together with a translation of the same, together with a map of the land, and will make such other and further proof as may be required by the board.

Your petitioner prays your honorable board to decree his claim to said tract of land to be valid, and confirm the same.

SUTHERLAND & CARR,
Att'ys for Petitioner.

Filed in office, Oct. 16, 1852.
(Signed) GEO. FISHER, *Sec'y.*

Deposition of S. Arguello.

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He has a house there in which he has lived since that time, and is cultivating ground, and keeping stock on the land.

S. ARGUELLO.

Sworn and subscribed before me.

HILAND HALL, *Com'r.*

Filed in office, Nov. 10th, 1852.

(Signed) GEO. FISHER, *Sec'y.*

Deposition of Santiago Arguello.

OFFICE OF THE COMMISSIONER, G. THOMPSON BURRILL, AT LOS ANGELES, CALIFORNIA.

Before me, G. Thompson Burrill, commissioner duly qualified for the taking of testimony to be used before the board of commissioners to ascertain and settle the private land claims in the State of California, personally appeared Santiago Arguello, a witness in behalf of Andres Ybarra, claimant for the land named Rancho Encenitos, numbered on the docket of said board with No. 395, who upon oath declared and saith as follows:

Questions asked by Counsel for Claimant.

Question No. 1. What is your name, age, and place of residence?

Answer. My name is Santiago Arguello; I am sixty-three years old, and I reside eighteen miles south of San Diego.

Question No. 2. Are you acquainted with the Rancho of Encenitos in San Diego county; if yea, state all you know about its boundaries, and occupation by Andres Ybarra?

Answer. I know the rancho; the first line north from the house of Ybarra are some notable rocks, which rocks comes down the Cañada , which is the northern boundary; the second or southern boundary are also some rocks, where there is standing water, which is the ravine known by the name of San Alego; the western boundary is the north of the lake San Alego; the eastern line is the lake of , formed by the ravine of the same name, which forms a square, embracing one setio, but the measured but one half which is embraced in the above boundaries. Jose Ma. Orasco, alcalde of San Diego, measured the land, I attending as prefect of the second district. This

possession juridical was given during the year 1842 or 1843, when Micheltorena was governor; since the year 1840 or 1841 it has been occupied by the claimant, who lived there with his family in an adobe house, which consisted of a hall and two rooms; crops sown and a number of animals on the rancho, together with a garden and vineyard. I know that Ybarra is now in possession of said rancho, and has been in continued possession since 1840 or 1841. I have visited the rancho frequently since that time.

S. ARGUELLO.

Sworn and subscribed before me, this 5th day of July, A. D. 1854.
G. THOMPSON BURRILL, *Com'r*.

I hereby certify that C. E. Thom, esq'r, was present at the time that the foregoing testimony was taken, acting for, on behalf of, and by the authority of J. H. McKane, esqr., U. S. law agent.
Los Angeles, July 5, 1854.
G. THOMPSON BURRILL, *Com'r*.

Filed in office, July 21st, 1854.
(Signed) GEO. FISHER, *Sec'y*.

[*For map see original, page* 8.]

[1 S. D. K.]

Año de 1845.

Espediente promovido pr. el C'no Andres Ybarra, ampliacion al que posea, y la solicitud de medio sitio que se falta al que tiene concedido.

(No. 541.)

[2 S. D. K.]

Ex'ma S'or Gobernador:

Andres Ybarra, recino del partido de San Diego, ante V. E. con el debido respeto comparesco y digo: Que al haberse hecho por las autoridades un reconocimiento de los terrenos de San Dieguito, y el que actualmente poseo llamado Los Encenitos se encontró que segun la concesion en mi favor se hizo por el superior gobierno departmental me faltaba para su completo alguna parte de terreno hacia el sur de la que hasta la fecha caresco pues no se me ha puesto en posecion de ella. En esta virtud a V. E. ruego encarecidamente que se digne darme el
[3 S. D. K.] completo de d'ha concesion para la parte del oriente, y á mas de me adjudique en propiedad lo restante de ter-

reno que resultare sobre al mismo, rumbo que se halla completamente baldio, yá mas de ser coto se lo impone de serros pocos transitados por la misma incomidad. De esta no resulta perjuicio á ninguna persona, y á mi me benificia V. E. en razon de que suis bienes estan ya acostumbrados á apesentar en estos terrenos por lo cual esperó no ser desamido de la generosidad de V. E. juro, y suplico se me dispenso el papel por no haber de sellado respectivo.

Angeles, Octubre 21, de 1845.

No se firmar.

ANGELES, *Octubre* 22, *de* 1845.

Para la presente instancia el señor sub-prefecto del partido de San Diego, para que tomando los informes que crea necesarios encita el suyo haciendo que el interesado agregue el diseño del terreno, que pretende para que con vista de todo resolver lo que fuere justo.

PICO.

SAN DIEGO, 9*bre* 29, *de* 1845.

Informe el alcalde 2o. de este lugar si el terreno, que solicita el interesado es valdio y si pertenece apropiedad particular concluido. Vuelva el espediente á esta sub-prefectura, lo demas que previene el superior decreto que antecede para lo cual hará que el solicitante presente el titulo de terreno que actualmente ocupa.

ARGUELLO.

S'or Prefecto:

En atencion al superior decreto, de V. de 29, del pasado el terreno [4 S. D. K.] que solocito el C. Andres Ybarra, para ampliacion del que posu, esta baldio que corresponde apropiedad particular, es lo que puedo informar conforme á justicia.

San Diego, O'bre 1o, de 1845.

J. B. ARGUELLO.

Ex'mo Señor:

Atento al superior decreto, original de V. E. en 22 de O'bre, y mandado practicar el informe respectivo del terreno que solicita el interesado, en ampliacion del que posee resulta que es valdio y no corresponde á propiedad particular. Por lo que respeta á lo que hace presente en cuanto al que de falta para el completo de un sitio que tiene concedido en el paraje de los Encunales; como que fué en aquel tiempo la autoridad que aun precencia se practica la medicion, de este citio resulta que el plano que se presente al gob'no la falta de medio sitio que comparueba, aunque no es presa su total el acto que se celebro con f'ha 5 de Mayo, de 1843, y que sedio al interesado una copia certificado para su resguardo. En vista de la es puesto y resultando que el pedido es contiguo al sitio que ocupa parese que no resulta obstaculo á que se le añada, al que si fuese de la aprobacion de V. E. aceder á la ampliacion que solicita el interesado.

S. ARGUELLO.

[5 S. D. K.] San Diego, Diciembre 10th, de 1845.

ANGELES, *Enero* 23, *de* 1846.

Vista la solicitud con que da principio este espediente el informe del S. prefecto de Sn. Diego, con lo de mas que se tuvo presente y ver convino da conformidad con la ley de 18 de Agosto, de 1828, declaro al ciudadano Andres Ybarra, dueno de todo el terreno baldio que resulte entre los linderos del terreno, que posee y las de el rancho de Lorenzo Soto, librese les el titulo correspondiente y reserve el espediente, Pio Pico, gobernador de los Californias, asi lo mandó, decretó y firmé.

PIO PICO.

J. M. COVARRUBIAS, *S'rio.*

[6 S. D. K.] Pio Pico, vocal de año de la Asamblea Departmental y Gobernador Provicional de las Californias:

Por cuanto al ciudadano Andres Ybarra, ha pretendido para su beneficio personal y el de su familia el sobrante de tierra, que resulta entre los linderos del terreno que posee, nombrado Encenitos, y los del rancho de Lorenzo Soto, practicadas previamente las averiguaciones consernientes; usando de las facultades que me son conferidas á nombre de la nacion Mejicana, ha venido por decreto de este dia en conceder le dicha tierra. Declarandole la propiedad de el la por las presentes letras, de conformidad con la ley de Agosto, de 1824, y el reglamento,
[7 S. D. K.] de 21 de Noviembre, de 1828, ó reserva de la aprobacion de la Ex'ma Asamblea Departamental, y bajo las condiciones siguientes:

1a. Podra cercarlo sin perjudicar las travesias caminos y servidumbres; lo disfrutara libre y esclusivamente destinandolo al uso que mas le acomode, pues se le concedio en ampleacion del terreno que posee.

2a. Solicitará del juez respectivo le de posecion judicial, en virtud de este despacho por el cual se demarcaran los linderos con los mojoneros necesarios.

3a. El terreno de que se le hace donacion es el que demuestra el diseño que obia en el espediente y el que se encuentra baldio entre los
[8 S. D. K.] linderos de la parte este del paraje de los Encientos y linderos oeste del rancho de Lorenzo Soto. El juez que la posecion lo hará medir conforme á ordenanza y dará, aviso al gobierno departamental, del numero de sitios de ganado mayor que contenza.

En consecuencia mando que teniendose el presente titulo, por firmé y valedero se tome razon de el en el libro, á que corresponde y se en-
[9 S. D. K.] treque al interesado para su resguardo y demas fines. Dado en la Ciudad de Los Angeles, en papel comun por no haber del sellado á veinte tres de Enero, de mil ochocientos cuarenta y seis.

S'or DON PABLO NORIEGA,

Muy Señor mio.

[10 S. D. K.] Angeles, Enero 21, de 1846.

[*For map see original, page* 13.]

OFFICE SURVEYOR GENERAL OF THE UNITED STATES FOR CAL'A.

I, Samuel D. King, Surveyor General of the United States for the State of California, and as such now having in my office and under my custody a portion of the former Spanish and Mexican Territory or department of Upper California, under and by virtue of the second section of the act of Congress providing for the survey of the public lands in California, and for other purposes, do hereby certify that the ten preceding and hereunto attached pages of tracing paper, numbered from 1 to 10 inclusive, and each of which is verified by my initials (S. D. K,) exhibit a true and accurate copy of a document on file and forming part of the said archives in this office.

In testimony whereof, I have hereunto signed my name officially and affixed my private seal, in lieu of the seal of office, which has not been received, at the city of San Francisco, Cal., this 7th day of July, 1853.

SAMUEL D. KING,
Surveyor General Cal'a.

Filed in office, Oct. 17, 1854.

GEO. FISHER, *Sec'y.*

Year 1845.

Record of proceedings instituted by citizen Andres Ybarra, for an augmentation to that which he owns, and praying a half square league which is wanting to that which has been granted to him.

No. 541.

Translation of Espediente.

Most Excellent Señor Gobiernor:

I, Andres Ybarra, a resident of the partido of San Diego, appear before your excellency with due respect, and state, that upon an examination having been made by the authorities of the lands of San Diego, and that which I present possess, called "Los Encenitos," it was ascertained that, according to the grant which was made in my favor by the superior departmental government, there was lacking to complete the same a portion of land towards the south, the want of which I have suffered until the present time, because I have not been put in possession thereof.

Wherefore I pray your excellency will be pleased to allow me the balance of the said grant on the part of the east, and moreover to adjudge to me the ownership of the balance of the land which may result as a surplus in the same direction, which is entirely unoccupied, (valdio,) and besides being small, it is comprised of hills, and in consequence of this inconvenience little traveled over.

No damage will result thereby to any person, and your excellency will confer upon me a benefit, because my stock is already accustomed

session by virtue of this patent, by whom the boundaries shall be designated by the necessary landmarks.

3d. The land hereby granted is delineated on the plat which forms a part of the expediente, and that which is found to be vacant between the boundaries of the eastern side of the place of the "Encenitos" and the western boundaries of the rancho of Lorenzo Soto.

The justice who may put him in possession thereof will cause it to measured according to the ordinance, and shall give notice to the departmental government of the number of square leagues which it contains.

Therefore I order that the present title, being held as firm and valid, an entry be made thereof in the book to which it corresponds, and that this be delivered to the interested party for his security and other purposes.

Given at the city of Los Angeles, on common paper, because there is no stamped, on the twenty-third day of January, one thousand eight hundred and forty-six.

I, George Fisher, secretary to the U. S. land commission to ascertain and settle private land claims in the State of California, hereby certify the foregoing to be a true and correct translation of a Spanish document, in case No. 395, wherein Andres Ybarra is the claimant vs. the United States, for the place named "Las Encenitos," now on file in this office.

In testimony whereof I have hereunto signed my name, office of the secretary of the above named commission, at the city of San Francisco, Cal., this 10th day of October, A. D. 1854.

GEO. FISHER, *Sec'y.*

Filed in office, Oct. 10th, 1854.

(Signed) GEO. FISHER, *Sec'y.*

Doc. H.H, No. 1, *annexed to the Deposition of S. Arguello.*

Sello 1o, Seis Pesos.

Habilitado provicionalmente por la aduana maritima de Monterey, para los años de 1839 y 1840.

ALVARADO. ANTO. MA. OSIO.

Valga para el año de 1840.

ANTONIO MA. OSIO.

Juan B. Alvarado, Gobierno Constitucional del Departamento de las Californias:

Por cuanto el ciudadano Andres Ybarra ha pretendido para su beneficio personal y el de su familia, un sitio de ganado mayor entre la Cañada de San Alejo y las Encenitos, colindante con el terreno del Ciudadono Juan Marron y el Ciud'o Maria Marron, practicadas previamente las diligencias y averiguaciones concernientes segun lo dispuesto por las leyes y reglamentos; usando de las facultades que me son con-

feridas á nombre de la nacion Mejicana, he benido en concederlee el terreno mencionado declarandole la propiedad de el, por las presentes letras sugetandose a la aprovacion de la ex'ma junta departmental y bajo las condiciones siguientes:

1o. Podra cercarlo sin perjudicar las travecias caminos y servidumbres: lo disfrutara libre y esclusivam'te destinandole al uso que mas le acomode, pero dentro de un año fabricará casa y estará habitada.

2o. Solicitara del juez respectivo que le de posecion juridica en virtud de este despacho por el cual se demarcaran, los linderos en cuyos limites pondra silvestres de alguna utilidad.

3o. El terreno de que se hace mencion es de un citio de ganado mayor, poco mas ó menos segun esplica el deseño que corre en el espediente. El juez que diere la posecion lo hará medir conforme á ordenanza quedando el sobrante que resulte á la nacion para los usos convenientes.

4o. Si contraviniere á estas condiciones perdera su derecho el terreno y será denunciable por otro.

En consecuencia mando que teniendose por firme y valedero este titulo, se tome razon de el en el libro respetivo y se entreque al interesado para su resguardo y demas fines.

Dado en Monterey, á trece de Julio, de mil ochocientos cuarenta y dos.

JUAN B. ALVARADO.
MAN'L JIMENO, *S'rio.*

Queda tomada razon de este despacho en el libro de asuntos sobre adjudicacion de terrenos valdios, ó fojas 14.

El ex'mo s'or gobernador, ha dispuesto se tome razon de esta consecion en la prefectura del segundo distrito.

JIMENO.

Queda tomado razon de este titulo en el libro de asuntas llebado en lo secretario de esta prefectura del 1o distrito, ó fojas 4.

Angeles, Julio 19, de 1842.

JOSE R. ARGUELLO, *S'rio.*

Filed in office, Nov'r 10, 1852.

GEO. FISHER, *Sec'y.*

Seal 1st, Six Dollars.

Provisionally furnished by the maritime custom-house of Monterey, for the years 1839 and 1840.

ANTONIO MA. OSIO.

ALVARADO.

It may avail for the year 1842.

[STAMP.] ANTONIO MA. OSIO.

"C."—*Translation of Grant.*

Juan B. Alvarado, Constitutional Governor of the Californias:

Inasmuch as the citizen Andres Ybarra has solicited for his personal benefit and that of his family, one "sitio de ganado mayor," between

the Cañada of San Aliso and the Encenitos, bounded *bounded* by the land of the citizen Juan Osuma and the citizen Juan Maria Marron, having previously complied with the obligations and made the investigations required by the laws and regulations concerning them; using the powers conferred upon me, in the name of the Mexican nation I have concluded to grant him the land mentioned, declaring it his property by these presents, subject to the approval of the excellent departmental junta, and under the following conditions:

1st. He may enclose it without prejudice to cross-roads and servitudes, enjoying it freely and exclusively, using or cultivating it in the manner most agreeable to himself, but within the space of one year he shall build a house upon it, and have it inhabited.

2nd. He shall solicit the respective judge to give him juridical possession in virtue of this patent, by whom shall be marked the boundaries, on whose limits shall be placed, at the proper points, for landmarks, some fruit or forest trees of some utility.

3rd. The land of which mention has been made is of one "sitio de ganado mayor," as explained by the plat or design which is annexed to the respective espediente.

The judge who shall give the possession shall have it measured conformably to the ordinance, providing for the remainder, which reverts to the nation for its convenient uses.

4th. If he violate these conditions he shall lose his right to the land, which may be denounced by another.

In consequence, I order that this title, being held firm and valid, be recorded in the respective book, and delivered to the interested party for his security and further purposes.

Given at Monterey, the third of July, one thousand eight hundred and forty-two.

JUAN B. ALVARADO.
MAN'L JIMINO, *Secretary.*

This decree is registered in the book of entries of adjudication of vacant lands, at page 14.

JIMINO.

His excellency, the governor, has directed that this concession be registered in the prefecture of the second district.

JIMINO.

This title is registered in the book of entries in the office of this prefecture of the second district, at page 4.

Angeles, July 17, 1842.

JOSE R. ARGUELLO, *Sec'ty.*

Filed in office, Oct. 16th, 1852.

(Signed) GEO. FISHER, *Sec'y.*

Document H.H, No. 2, annexed to the Deposition of S. Arguello.

SAN DIEGO, *Julio 22d, de* 1842.

Hallandose concluydas estas diligencias de este espediente pertenecientes al rancho de las Encenitos, de se le testimonio al Ciudadano

Andres Ybarra ynteresado á ellas para su seguridad y usos que le convengan.

El Ciudadano José Antonio Gongora, juez de paz, asi lo provego mando, y firmo, con los testigos de ass'a, segun d'ro, doy fee.

JOSE ANTONIO GONGORA,
BONIFACIO LOPEZ,
JOSE MARA ALVARADO.

Razon alas, 22 dias del mes de Julio, de 1842. Queda librado al interesado el testimonio que se refiere en el auto anterior y para constancia lo rubrique.

Filed in office, Nov. 10th, 1852.

GEO. FISHER, *Sec'y.*

SAN DIEGO, *July 22d*, 1842.

Being concluded, the process of this expediente pertaining to the rancho "de los Encenitos," let a copy be given to the citizen Andres Ybarra, the person interested in it, for his security and proper uses.

The citizen José Antonio Gongora, judge of the peace, has so decreed, commanded and signed, with the witnesses of assistance, according to law, of which I give faith.

JOSE ANTO. GONGORA,
BONEFACIO LOPEZ,
JOSE MA. ALVERADO.

Entry.

On the 22d day of the month of July, 1842. The copy which is referred to in the above act has been delivered to the interested party for his protection, which I attest.

Filed in office, Oct. 16th, 1852.

(Signed) GEO. FISHER, *Sec'y.*

ANDRES YBARRA
vs.
THE UNITED STATES.

For the place called "Los Encenitos," in San Diego county, containing one square league of land.

In his petition the claimant alleges that the land claimed, being one square league, was granted to him by Governor Juan B. Alvarado, on the 3d day of July, 1842, and that juridical possession was given to him, and the boundaries designated and defined, on the second day of July, in the same year.

The grant, duly proved, is given in evidence. A document is also presented, which appears to be a copy of the concluding sentence of a testimonial of juridical possession, dated July 22, 1842. If such was

the true character of the instrument, its mutilated condition renders it of no avail for the purposes for which it was designed.

It contains no statement of the act done by the alcalde in measuring the land, and no description of the premises designated. It affords no aid, therefore, to the claimant in establishing a segregation of the premises claimed.

The testimony in the case, however, shows that juridical possession of the place was given to the grantee, and the witness, who as prefect attended to the official act, gives a description of the boundaries of the rancho, which were designated, as we understand the testimony at the time. The land included within the designated limits is stated as one square league, the quantity granted.

The witness states, after specifying the boundaries of the square league, that they measured but one-half of the same.

We find some difficulty in understanding fully the reason for or character of this limitation; but as the boundaries appear to be well defined, the premises being located according to the grant and embracing only the quantity granted, and as no substantial reason appears why the grantee should be deprived of any portion of it, we are of opinion that the segregation of the land is sufficient, and the entire league embraced within the limits described must be regarded as assigned to him under the grant. The proof shows that the claimant has lived with his family on the place, and has cultivated and improved the land, during the last fourteen years. It has been his homestead ever since 1840.

The claim is adjudged valid, and a decree will be entered accordingly. Confirmed.

Filed in office, Oct. 31, 1854.

(Signed) GEO. FISHER, *Sec'y.*

Decree.

ANDRES YBARRA vs. THE UNITED STATES. } 395.

In this case, on hearing the proofs and allegations, it is adjudged by the commission that the claim of the said petitioner is valid, and it is therefore decreed that the same be confirmed.

The land of which confirmation is hereby made is situated in San Diego county, and is known by the name of Los Encenitos, and the same on which said petitioner resides; and is bounded and described as follows, to wit:

The first line, north of the house of said Ybarra, is some notable rocks, from which rocks comes down the Cañada Bertequitus, which is the northern boundary; the second, or southern boundary, is some rocks where there is standing water, which is the ravine known by the name of San Alego; the western boundary is the mouth of the Lake San Alijo; the eastern line is the lake of Batiquitas, formed by

the ravine of the same name, which forms a square, the same containing one square league of land, a little more or less.

ALPHEUS FELCH,
R. AUG. THOMPSON,
S. B. FARWELL,
Commissioners.

Filed in office, Oct. 31, 1854.
(Signed) GEO. FISHER, *Sec'y.*

And it appearing to the satisfaction of this board, that the land hereby adjudicated is situated in the southern district of Cal., it is hereby ordered, that two transcripts of the proceedings, and of the decision in this case, and of the papers and evidence upon which the same are founded, be made out and duly certified by the sec'y, one of which transcripts shall be filed with the clerk of the United States district court for the southern district of Cal., and the other be transmitted to the Att'y Gen'l of the Un. S.

OFFICE OF THE BOARD OF COMMISSIONERS
To ascertain and settle the private land claims in the State of Cal'a.

I, George Fisher, secretary to the Board of Commissioners to ascertain and settle the private land claims in the State of California, do hereby certify the foregoing thirty-two pages, numbered from 1 to 32, both inclusive, to contain a true, correct, and full transcript of the record of the proceeding, and of the decision of the said board, of the documentary evidence, and of the testimony of witnesses upon which the same is founded, on file in this office, in case No. 395, on the docket of the said board, wherein Andres Ybarra is the claimant against the United States, for the place known by the name of "Los Encenitos."

In testimony whereof, I hereunto set my hand and affix my private seal, (not having a seal of office,) at San Francisco, [G. F.] California, this twenty-fifth day of May, A. D. 1855, and of the independence of the United States of America the seventy-ninth.

GEO. FISHER, *Sec'y.*

UNITED STATES DISTRICT COURT,
Southern district of California.
CLERK'S OFFICE, LOS ANGELES.

I, Charles E. Carr, clerk of the district court of the United States for the southern district of California, do hereby certify that the foregoing thirty-two pages, numbered from 1 to 32, both inclusive, contain a full, true and correct copy of transcript No. 395, filed in this office, wherein Andres Ybarra is appellee and the United States appellants, for "Los Encenitos."

In testimony whereof, I have hereunto set my hand and af- [SEAL.] fixed the seal of said court at Los Angeles, California, this

nineteenth day of January, A. D. 1856, and of the independence of the United States of America the eightieth.

C. E. CARR, *Cl'k.*

DISTRICT COURT UNITED STATES,
Southern district of California.

CLERK'S OFFICE, LOS ANGELES COUNTY.

ANDRES IBARRA, appellee, ads. THE UNITED STATES, appellants. } Docket No. 228. Transcript No. 395.

Be it remembered, that on the 6th of June, A. D. 1855, in the district court of the United States for the southern district of California, the following proceedings were had, to wit: A duly certified transcript of the proceedings and decision of the commission to ascertain and settle the private land claims in the State of California, when sitting as a board, in the case wherein Andres Ibarra is the claimant against the United States for the place named "Los Encenitos," was received and filed, and docketed with No. 228, and is as follows, to wit:

(Vide page 1.)

LOS ANGELES, *July 21st*, 1855.

In case No. 228, Andres Ibarra for "Los Encenitos," the notice of appeal from U. S. attorney general was received and filed.

(Vide page 3.)

LOS ANGELES, *Oct. 12th*, 1855.

In same case the petition of U. States for review was filed.

(Vide page 4.)

Upon which petition the following subsequent proceedings were had in their chronological order, to wit:

LOS ANGELES, *Oct. 12th*, 1855.

In same case the answer of appellee was filed.

(Vide page 6.)

LOS ANGELES, *Oct. 16th*, 1855.

In same case the opinion of the court confirming the claim was delivered, and the following decree entered.

(Vide page 8.)

LOS ANGELES, *Oct. 18th*, 1855.

In same case the order for appeal, on motion of P. Ord, U. S. district attorney, was filed.

OFFICE OF THE ATTORNEY GENERAL OF THE UNITED STATES,
WASHINGTON, *June* 13, 1855.

395.—Los Encenitos.—Andres Ybarra, Claimant.

You will please take notice, that in the above case, decided by the commissioners to ascertain and settle private land claims in the State

of California in favor of the claimant, and a transcript of the proceedings in which was received in this office on the 9th day of April, 1855, the appeal in the district court of the United States for the southern district of California will be prosecuted by the United States.

Very respectfully,

C. CUSHING, *Attorney General.*

Filed, July 21st, 1855.

C. E. CARR, *Cl'k,*
By A. H. CLARK, *Dep'y.*

In the District Court of the United States for the southern district of California.—Hon. Isaac S. K. Ogier, Judge.

ANDRES YBARRA vs. THE UNITED STATES. } No. 228. (Transcript No. 395.)

The petition of Pacificus Ord, Attorney of the United States for the southern district of California, for and in behalf of the United States, respectfully represents, that on or about the 18th day of October, A. D. 1852, Andres Ybarra petitioned the United States land commissioners for the State of California, claiming a certain tract of land called Los Encenitos, containing one square league, situated in San Diego county, California; that on or about the 31st day of October, A. D. 1854, the said commissioners confirmed the said claim; that thereafter, to wit, on or about the 9th day of April, A. D. 1855, the Hon. Caleb Cushing, Attorney General of the United States, received a duly certified transcript of the proceedings, papers and decision, with the evidence of the said commissioners in said cause; that thereafter, to wit, on or about the 6th day of June, A. D. 1855, the said commissioners filed or caused to be filed with the clerk of this hon'ble court a duly certified transcript of their proceedings, with the evidence, papers and decision in said cause; that thereafter, to wit, on or about 21st day of July, A. D. 1855, the said attorney general filed or caused to be filed with the said clerk of the said court a notice of the intention of the United States to prosecute the appeal in said cause.

Your petitioner denies generally all the allegations of said petition, and he denies further the validity of the right, title or claim of the said Andres Ybarra to the said land claimed as aforesaid.

And your petitioner says, that the land claimed as aforesaid is situate in the southern district of California and within the jurisdiction of this hon'ble court, wherefore petitioner prays that the said Andres Ybarra, or his attorney, may be served with a copy of this petition, and that after due proceedings had the said decision of the said commissioners may be reviewed, reversed and set aside, and that the said claim, right or title of said Andres Ybarra to said land may be decreed to be invalid, with costs and general relief.

P. ORD,
Attorney of the United States for the southern district of California.

Filed Oct. 12th, 1853.

C. E. CARR, *Cl'k,*
By J. W. ROSS, *Dep.*

In the United States District Court for the southern district of California.

ANDRES YBARRA ads. THE UNITED STATES. } No. 228.

The respondent, for answer to the petition filed in this cause, answers and says: It is true that the land mentioned in said petition and in said transcript of the proceedings before the said Board of Commissioners, lies within said southern district of California and within the jurisdiction of this court.

But this respondent denies that his title to the said land is invalid, and avers that his title is valid, and prays that the decision of the said board be affirmed, and his title be decreed to be valid.

THOS. W. SUTHERLAND,
Att'y for respondent, Andres Ybarra.
By E. O. CROSBY, *of Counsel.*

It is hereby stipulated on the part of the respondent, Andres Ybarra, that this cause be submitted at any time hereafter upon the papers, without argument on his part.

Angeles, Oct. 11, 1855.

THOS. W. SUTHERLAND,
Att'y for Ybarra.
By E. O. CROSBY, *of Counsel.*

Filed, Oct. 12th, 1855.

C. E. CARR, *Cl'k.*
By J. W. ROSS, *Dep'y.*

In the United States District Court for the southern district of California.—Special Term, Sept., 1855.—Los Angeles.

ANDRES YBARRA, app'ee, ads. THE UNITED STATES, app'lts. } No. 228.—Transcript No. 395.

On motion of P. Ord, attorney of the United States for the southern district of California, it is ordered by the court, that an appeal be granted the United States to the Supreme Court of the United States, from the judgment of this court against the United States in the above entitled cause, rendered on or about the 16th day of October, A. D. 1855.

P. ORD, *U. S. Dis't Att'y.*

Filed, Oct. 18th, 1855.

C. E. CARR, *Cl'k.*
By J. W. ROSS, *Dep'y.*

District Court of the United States for the southern district of California.

THE UNITED STATES, appellants,
vs.
ANDRES YBARRA, appellee. } No. 228.—"Los Encenitos."

This cause coming on to be heard at a special term of this court, on an appeal from the final decision of the commissioners to ascertain and settle the private land claims in the State of California, under the act of Congress approved March 3d, 1851, upon the transcript of the decision and proceedings and the papers and evidence on which said decision was founded; and it appearing that said transcript has been duly filed, according to law, and counsel for the respective parties having been heard, it is ordered, adjudged and decreed, that the decision of the said commissioners be affirmed, and that the claim of the said Andres Ybarra to the land described in the grant in this case is a good and valid claim, and the same is hereby confirmed to the extent of one square league, and no more: Provided that the said quantity of one square league be contained within the limits called for in said grant and map to which it refers; but if there be less than said named quantity, then the claim of said appellee to said less quantity is hereby confirmed.

ISAAC S. K. OGIER,
U. S. Dist. Judge for the southern dist. of California.

UNITED STATES DISTRICT COURT,
Southern District of California.

CLERK'S OFFICE, LOS ANGELES.

I, Charles E. Carr, clerk of the district court of the United States for the southern district of California, do hereby certify the foregoing eight pages, numbered from 1 to 8, both inclusive, to contain a full, true and correct transcript of the record of the proceedings, and of the decision of the said court, of the documentary evidence, and of testimony of witnesses upon which the same is founded, on file in this office, in case No. 228, in the docket of the said court, wherein Andres Ybarra is appellee and the United States are appellants, for "Los Encenitos."

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at Los Angeles, California, [SEAL.] this nineteenth day of January, A. D. 1856, and of the independence of the United States of America the eightieth.

C. E. CARR, *Cl'k.*